820 KAR 1:005. Charitable gaming licenses and exemptions.

RELATES TO: KRS 238.515, 238.525, 238.530, 238.535, 238.540, 238.555

STATUTORY AUTHORITY: KRS 238.515, 238.525, 238.530, 238.535(2), (13), 238.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(1) requires the Department of Charitable Gaming to license charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming. KRS 238.515(2) authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility. This administrative regulation establishes criteria for temporary licenses, exemptions, and inspections for verifying the information contained in an application.

Section 1. Application for Licensure.

(1) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit the appropriate complete, accurate, and documented application:

(a) A charitable organization shall submit Form CG-1;

(b) An organization authorized to hold special event raffles pursuant to KRS 238.535(14)(b) shall submit Form CG-SER;

(c) A distributor shall submit Form CG-2;

(d) A manufacturer shall submit Form CG-3; and

(e) A charitable gaming facility shall submit Form CG-4.

(2) The department shall review the application and notify the applicant in writing of any deficiencies in the application as soon as practicable. An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(4) If the applicant files a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the department shall issue a subsequent deficiency notice. If the deficiency is incapable of being cured, the department shall deny the license.

(5) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days of receipt.

Section 2. License Requirements, Fees, and Issuance.

(1) The department shall issue a license if the applicant has:

(a) Met the statutory requirements established:

1. For charitable organizations, by KRS 238.535;
2. For special event raffle organizations, by KRS 238.535(14)(b);
3. For distributors and manufacturers, by KRS 238.530; or
4. For charitable gaming facilities, by KRS 238.555;

(b) Paid all fees and fines;

(c) Filed all required reports;

(d) Filed an acceptable financial plan, if required;

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms; and

(f) Submitted fingerprints cards as required by KRS 238.525.

(2) Fees for licenses issued shall be paid according to the following schedule:

(a) A nonrefundable application fee of twenty-five (25) dollars shall accompany each application for licensure and shall be credited against the amount of the annual license fee, if the requested license is granted.

(b) For charitable organizations and organizations licensed pursuant to KRS 238.535(14)(b):

1. $100 for:
   a. A charitable organization upon initial application; or
   b. A charitable organization with gross receipts not in excess of $100,000;
2. $200 for a charitable organization with gross receipts over $100,000, but not in excess of $250,000; or
3. $300 for a charitable organization with gross receipts over $250,000.

(c) For manufacturers or distributors: $1,000.

(d) For charitable gaming facilities:

1. $1,250 for a facility conducting eight (8) or fewer sessions per week; or
2. $2,500 for a facility conducting between nine (9) and eighteen (18) sessions per week.

(3) A license shall not be issued until the license fee and any other fees or fines due are paid in full.

(4) The license term shall be for one (1) year from the effective date of the license.

(5) A licensed charitable organization, distributor, manufacturer, or charitable gaming facility may submit a written change request to change any information contained in the license application or printed on the license. All change requests shall be accompanied by a twenty-five (25) dollar change fee and be signed by an officer. The department shall process change requests and issue or deny an amended license within ten (10) days of receipt, and the licensee shall not engage in gaming until a license reflecting the change request has been issued.

(a) Except as provided in KRS 238.535(12)(b)(2), a licensed charitable organization may change the date, time, or location of a charitable gaming session if the licensed charitable organization submits a written request to the department at least ten (10) days prior to the date of the requested change. Any change request made pursuant to this subsection must be accompanied by a lease, if required, for the new gaming location.

(b) If a charitable organization wishes to cancel a charitable gaming session, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the charitable gaming session, except in the event of an emergency beyond the organization's control, in which case the organization shall notify the department of the change as soon as practicable. A cancellation shall not require a change fee.

Section 3. Temporary License.

(1) Application for Licensure. The department may issue a temporary license to an applicant for a charitable gaming license if the applicant has submitted a complete and accurate license application form, and has complied with all other licensing requirements for an annual license.

(2) License Fee. For each temporary license issued, the licensee shall pay a twenty-five (25) dollar fee. The total temporary license fee charged in a year shall not exceed the annual license fee.

Section 4. Distributor Requirements.

(1) For the operation of a distributorship, a distributor shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensed distributor owns multiple distributorships, a separate bank account shall be maintained for each distributorship.

(2) Any payments received by a distributor from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

(3) A distributor or its agent shall maintain storage facilities within this state for gaming supplies to be sold within the Commonwealth of Kentucky, and shall identify the facilities' physical locations to the department. Storage facilities shall be made accessible to the department for inspection upon request.

Section 5. Charitable Gaming Facility Requirements.

(1) A licensed charitable gaming facility shall be permitted to list on its Web site the names, license numbers, gaming sessions, and information regarding the charitable organizations that game at that licensed charitable gaming facility.

(2) If a charitable organization contracts with a licensed charitable gaming facility to operate a concession stand, the members of the charitable organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the gaming session of any other charitable organization that games at that licensed charitable gaming facility.

(3) For a licensed gaming facility operation, a licensed gaming facility shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensee owns multiple licensed gaming facilities, a separate bank account shall be maintained for each licensed gaming facility. If separate businesses are operated out of the licensed gaming facility, including a check cashing service or a concession stand, each business shall have a separate bank account.

(4) Any payments received by a licensed gaming facility from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account of the charitable organization.

(5) The lease agreement executed between the licensed charitable gaming facility and charitable organization shall contain the day and time of each charitable gaming session a charitable organization will conduct at the licensed gaming facility. The day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization's charitable gaming license.

Section 6. Exempt Organizations.

(1) An organization seeking exemption from charitable gaming licensing requirements shall submit a complete and accurate Form CG-Exempt, Organization Grossing Under $25,000 Application for Exemption, at least thirty (30) days prior to the expected date of gaming. The Form CG-Exempt shall be submitted with a non-refundable fee of twenty-five (25) dollars.

(2) If the charitable organization has submitted a complete application, and meets the requirements for exemption established in KRS Chapter 238, the department shall issue a Notification of Exemption within thirty (30) days of the completed submission.

(3) The department shall review the application and shall notify the applicant within thirty (30) days of receipt of the initial application of the nature of any deficiencies. If identified deficiencies are not cured within thirty (30) days from the notice, the application shall be deemed withdrawn, and no exemption will be granted in response to the application.

(4) The charitable organization shall not be required to file an additional exemption application with the department if the gaming activities of the charitable organization remain within the qualifications for exempt status.

(5) The charitable organization shall notify the department of any changes in the exempt status of the charitable organization within thirty (30) days of the occurrence of such changes.

(6) A charitable organization possessing a Notice of Exemption shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-EFR, Annual Financial Report For Exempt Organization. The report may be filed electronically.

(7) A charitable organization that has had its exemption revoked for any reason shall pay a nonrefundable reinstatement fee of twenty-five dollars (25) with any application or request for reinstatement.

Section 7. Licensee Inspections.

(1) An applicant for a license or an exemption shall be able to demonstrate the existence of their establishment by:

(a) Contracts or leases;

(b) Utility bills;

(c) Records maintained by the parent organization;

(d) Bank records; or

(e) Similar documents.

(2) Any such records shall be accessible to the department for inspection.

(3) An applicant for a license or an exemption shall be able to demonstrate its maintenance of an office by copies of the business records including the articles of incorporation and by-laws, if any, any tax forms, the check book and bank statements, and any other records kept in the ordinary course of operating the type of business for which licensure is sought.

(4) An applicant for a charitable gaming facility license shall be able to demonstrate that it is the entity that is operating the charitable gaming facility and that the charitable gaming facility does not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the charitable gaming facility. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(5) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(6) Inspections shall be completed by appropriate department personnel who shall file a report stating the results of the inspection performed.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form CG-Exempt, "Organization Grossing Under $25,000 Application for Exemption (2019)";

(b) Form CG-EFR, "Annual Financial Report For Exempt Organization (2019)";

(c) Form CG-1, "Charitable Organization License Application (2019)";

(d) Form CG-SER, "Special Event Raffle License Application (2019)";

(e) Form CG-2, "Distributor License Application (2019)";

(f) Form CG-3, "Manufacturer License Application (2019)";

(g) Form CG-4, "Facility License Application (2019)"; and

(h) Form CG-OC, "Notice Of Change In Officers Or Chairpersons (2019)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(32 Ky.R. 796; 1270; 1633; eff. 3-31-2006; 40 Ky.R. 1459; eff. 4-4-2014; 42 Ky.R. 916; eff. 1-4-2016; 44 Ky.R. 2650; 45 Ky.R. 1576; eff. 1-4-2019; TAm eff. 11-22-2019.)